Chapter 7: Felony Offenses in the Motor Vehicle Code

CHAPTER 7

This chapter contains an overview of felony traffic offenses found in the Motor Vehicle Code. However, it does not include offenses under Vehicle Code §625 and §904, which are the subject of Part I of this volume. In this chapter, the discussion of each offense contains the following elements where relevant:

- The name of the offense.
- The text of the statute creating the offense.
- A summary of the elements of the offense.
- Criminal penalties.
- Licensing sanctions.
- Issues of importance to deciding cases involving the offense.
- Related misdemeanors.

7.1 Attempted Traffic Offenses

Attempted traffic offenses may be governed by either the Vehicle Code's provisions for attempt, MCL 257.204b, or by the general attempt statute, MCL 750.92.

A. Vehicle Code Provisions

MCL 257.204b establishes sanctions for attempted traffic offenses as follows:

> "(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.
>
> "(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed."

Vehicle Code §204b appears to distinguish between attempted offenses for purposes of imposing licensing or vehicle sanctions and for purposes of imposing criminal penalties.

*See Section 1.4(I) of this volume for a definition of "substantially corresponding law of another state."

Licensing and vehicle sanctions—Subsection (1) apparently applies to attempted violations of any Michigan law, local ordinance substantially corresponding to a Michigan law, or substantially corresponding law from another state* for which licensing or vehicle sanctions are imposed under the Vehicle Code. Under subsection (1), any such attempted offense that results in licensing or vehicle sanctions under the Vehicle Code must be treated as a completed offense for purposes of imposing such sanctions, regardless of whether the offense itself constitutes a Vehicle Code violation.

Criminal penalties—Subsection (2) requires courts to treat attempted violations of "this act," i.e., of the Vehicle Code or a substantially corresponding local ordinance, as completed offenses for purposes of imposing criminal penalties. Thus, subsection (2) does not apply to attempted traffic offenses arising outside the Vehicle Code, such as unlawful driving away an automobile under MCL 750.413. Criminal penalties for these offenses must be governed by the general attempt statute, MCL 750.92. See *People v Etchison*, 123 Mich App 448, 452 (1983), and *People v Denmark*, 74 Mich App 402, 416 (1977) (general attempt statute applies only where there is no express provision for attempt in the statute under which the defendant is charged).

It thus appears that for attempted traffic offenses arising outside the Vehicle Code (e.g., unlawful driving away an automobile), licensing sanctions would

be governed by Vehicle Code §204b and criminal penalties by the specific statute under which the defendant was convicted or the general attempt statute.

Subsection (2) only applies to penalties for attempted violations of the Vehicle Code; it does not criminalize them. *People v Burton*, 252 Mich App 130, 136 (2002). In *Burton*, defendant challenged his convictions of attempted violations of MCL 257.625 and MCL 257.904 on the grounds that the Vehicle Code did not criminalize attempts. The Court of Appeals agreed, stating that "the Michigan Vehicle Code continues to treat violations of the code . . . as if they were completed offenses for purposes of punishment, but it does not specifically proscribe and include attempted violations within the bounds of the code." 252 Mich App 130 at 136. In the absence of a statutory provision specifically criminalizing attempts, attempted violations of the Vehicle Code should be tried under the general attempt statute.

B. General Attempt Statute

The general attempt statute, MCL 750.92, applies to attempted traffic offenses that are not covered by Vehicle Code §204b. The general attempt statute provides:

> "Attempt to commit crime—Any person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished as follows . . ."

The general attempt statute provides for two levels of punishment:

1. The attempt of an offense punishable by imprisonment for life or for five years or more is a felony punishable by imprisonment in the state prison not more than five years or in the county jail not more than one year.

2. The attempt of an offense punishable by imprisonment for less than five years is a misdemeanor. This misdemeanor is punishable by imprisonment in the state prison or reformatory not more than two years or in any county jail not more than one year or by a fine not to exceed $1,000.00.

Any term of imprisonment under the general attempt statute shall not exceed one half of the greatest punishment that might have been imposed for the completed offense. MCL 750.92(3).

Elements of Attempt

CJI2d 9.1 states the elements of an attempt as follows:

> 1. The defendant intended to commit a certain crime, which is defined as [state elements from the appropriate instructions defining the crime]; and
>
> 2. The defendant took some action toward committing the alleged crime but failed to complete the crime. "Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime that the defendant is charged with attempting and not some other objective."

If factually appropriate, the jury may be instructed that it may find the defendant guilty of attempt even though the evidence convinces it that the crime was completed. *Id*.

Attempt is a specific intent crime. *People v Langworthy*, 416 Mich 630, 644–645 (1982).

7.2 Altering, Forging, or Falsifying Motor Vehicle Documents or Plates, or Unlawful Holding, Using, or Selling of Altered, Forged, or Falsified Documents or Plates

A. Statute

MCL 257.257(1) provides:

> "A person who commits any of the following acts is guilty of a felony:
>
> > "(a) Alters with fraudulent intent any certificate of title, registration certificate, or registration plate issued by the department.
> >
> > "(b) Forges or counterfeits any such document or plate purporting to have been issued by the department.
> >
> > "(c) Alters or falsifies with fraudulent intent or forges any assignment upon a certificate of title.

> "(d) Holds or uses such a document or plate knowing the same to have been altered, forged, or falsified.
>
> "(e) Knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of title, registration certificate, registration plate, registration decal, or registration tab."

B. Elements of the Offense

MCL 257.257(1) establishes one felony offense that can be committed in one of three ways.

1. Altering, forging, or falsifying motor vehicle documents or plates — The defendant altered with fraudulent intent, forged, or counterfeited any of the following:

- a certificate of title;
- a registration certificate;
- a registration plate; or
- an assignment on a certificate of title.

2. Unlawful holding or using altered, forged, or falsified documents or plates — The defendant held or used any of the following documents or plates knowing that they had been altered, forged, or falsified:

- a certificate of title;
- a registration certificate;
- a registration plate; or
- an assignment on a certificate of title.

3. Unlawful possession, sale, or offering for sale stolen, false, or counterfeit documents, plates, decals, or tabs — The defendant knowingly possessed, sold, or offered for sale a stolen, false, or counterfeited:

- certificate of title;
- registration certificate;
- registration plate;
- registration decal; or
- registration tab.

C. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500.00 or more than $5,000.00; or
- both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.257(2):

- imprisonment for not less than two or more than seven years; or
- fine of not less than $1,500.00 or more than $7,000.00; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.257(3):

- imprisonment for not less than five years or more than 15 years; or
- fine of not less than $5,000.00 or more than $15,000.00; or
- both.

D. Licensing Sanctions

1. No points, but the conviction is reported to the Secretary of State. MCL 257.732(1)(a).

2. Suspension of defendant's license is mandatory for a period of one year. MCL 257.319(2)(a).

7.3 Possessing, Selling, or Offering for Sale a Stolen, False, or Counterfeit Certificate of Insurance

A. Statute

MCL 257.329(1) provides:

> "A person who knowingly possesses, sells, or offers for sale a stolen, false, or counterfeit certificate of insurance is guilty of a felony."

B. Elements of the Offense

Defendant knowingly possessed, sold, or offered for sale a stolen, false, or counterfeited certificate of insurance.

C. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500.00 or more than $5,000.00; or
- both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.329(2):

- imprisonment for not less than two or more than seven years; or
- fine of not less than $1,500.00 or more than $7,000.00; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.329(3):

- imprisonment for not less than five years or more than 15 years; or
- fine of not less than $5,000.00 or more than $15,000.00; or
- both.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

7.4 False Application for Title, or Possession of Stolen Vehicle With Intent to Fraudulently Pass Title

A. Statute

MCL 257.254 provides:

> "Any person who shall knowingly make any false statement of a material fact, either in his or her application for the certificate of

> title required by this act, or in any assignment of that title, or who, with intent to procure or pass title to a motor vehicle which he or she knows or has reason to believe has been stolen, shall receive or transfer possession of the same from or to another, *or who shall have in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer*, is guilty of a felony, punishable by a fine of not more than $5,000.00, or by imprisonment for not more than 10 years, or both. This provision shall not be exclusive of any other penalties prescribed by any law for the larceny or the unauthorized taking of a vehicle." [Emphasis added.]

The Michigan Supreme Court has held that proscribed possession of a vehicle known to be stolen, unless established along with intent to transfer title, would permit the Motor Vehicle Title Act to embrace more than one object, contrary to the title-object clause of the Michigan Constitution. The part of this statute that reads "or who shall have in his possession any motor vehicle which he knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer" must either be treated as surplusage or deemed inconsistent with the intent of the statute and deleted from it. *People v Morton*, 384 Mich 38, 40–41 (1970); Const 1963, art 4, §24.

B. Elements of the Offense

This statute establishes one felony offense that can be committed in one of two ways.

1. False application for title — CJI2d 24.7 sets forth the following elements:

- defendant applied for a [certificate/assignment] of title to a motor vehicle;
- defendant made a false statement of material fact. A material fact is an essential matter required for a valid transfer; and
- defendant knew the statement was false when he or she made it.

2. Possession of a stolen vehicle with intent to fraudulently pass title — CJI2d 24.6 sets forth the following elements:

- the vehicle was stolen;
- defendant received or transferred possession of the stolen vehicle;
- at that time, defendant knew or had reason to believe that the vehicle was stolen; and
- defendant intended to receive or transfer title of the stolen vehicle.

C. Criminal Penalties

MCL 257.254 provides the following criminal penalties for this offense:

- imprisonment for not more than ten years; or
- fine of not more than $5,000.00; or
- both.

These criminal sanctions are not exclusive of any other penalties prescribed by any law for larceny or the unauthorized taking of a vehicle.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

In view of the original title of this chapter, the Motor Vehicle Title Act, and its stated purpose to protect the title of motor vehicles, this statute must be read as related only to conduct affecting titles or their fraudulent transfer. Conviction for possession of a stolen vehicle is unauthorized in the absence of a showing of possession with knowledge that the vehicle was stolen coupled with intent to fraudulently transfer title. Simple possession is not a crime under this statute. *People v Morton*, 384 Mich 38, 40 (1970).

Specific intent to fraudulently pass title is not an element of making a false application for a certificate of title; intent can be inferred from the other necessary elements. This criminal offense is distinguishable from another provision of the Vehicle Code that involves reproducing, altering, counterfeiting, forging, or duplicating certificate of title, a misdemeanor under MCL 257.222(6).* *People v Jensen*, 162 Mich App 171, 181-85 (1987).

*See Volume 1, Section 3.33, for discussion of this statute.

Materiality is an issue for the jury to decide. *United States v Gaudin*, 515 US 506, 511 (1995).

"[E]very false statement is grounds for refusal to issue a certificate, MCL 257.219(2)(a) . . . , or, where the department discovers the false statement after issuance, for cancellation, revocation or suspension of the certificate. MCL 257.258. . . . " *People v Noble*, 152 Mich App 319, 326 (1986), overruled on other grounds 470 Mich 248 (2004).

A defendant must transfer or intend to transfer the right of ownership of a stolen vehicle; transfer or intent to transfer the vehicle's certificate of title is not an element of the offense. *People v Harbour*, 76 Mich App 552, 559 (1977), and *People v Ross*, 204 Mich App 310, 312-13 (1994).

7.5 False Certification

A. Statute

MCL 257.903(1) provides:

> "A person who makes a false certification to a matter or thing required by the terms of this act to be certified, including but not limited to an application for any type of driver license, dealer license, vehicle certificate of title, vehicle registration, vehicle inspection, self-insurance, personal information, or commercial driver training school, is guilty of a felony . . . ."

B. Elements of the Offense

1. defendant certified the truth and correctness of statements he or she made;

2. certification was required by the Motor Vehicle Code;

3. defendant made a false statement; and

4. defendant knew that the statement was false when he or she made it.

C. Criminal Penalties

For a **first conviction** of this offense, the following penalties apply pursuant to MCL 257.902:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500.00 or more than $5,000.00; or
- both.

For a **second conviction** of this offense, the following penalties apply pursuant to MCL 257.903(2):

- imprisonment for not less than two years or more than seven years; or
- fine of not less than $1,500.00 or more than $7,000.00; or
- both.

For a **third or subsequent conviction** of this offense, the following penalties apply pursuant to MCL 257.903(3):

- imprisonment for not less than five years or more than 15 years; or

- fine of not less than $5,000.00 or more than $15,000.00; or
- both.

D. Licensing Sanctions

1. No points, but the conviction is reported to the Secretary of State. MCL 257.732(1)(a).

2. If the defendant has no prior convictions for this offense within the past seven years, the Secretary of State must suspend the defendant's driver's license for 90 days. If the defendant has one or more prior convictions for this offense within the past seven years, the Secretary of State must suspend the defendant's driver's license for one year. MCL 257.319(5)(a) and (b).

7.6 False Statement in Citation Issued for a Civil Infraction

A. Statute

MCL 257.744a provides:

> "A police officer who, knowing the statement is false, makes a materially false statement in a citation issued under [MCL 257.742] is guilty of perjury, a felony punishable by imprisonment for not more than 15 years, and in addition is in contempt of court."

Citations issued under MCL 257.742 are for civil infractions only. Citations for misdemeanors are issued under MCL 257.728.

B. Elements of the Offense

1. defendant made a materially false statement in a citation issued for a civil infraction;

2. defendant knew that the statement was false when he or she made it; and

3. at that time, defendant was a police officer.

C. Criminal Penalties

MCL 257.744a provides for the following penalties:

- imprisonment for not more than 15 years; and
- contempt of court.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Issues

Materiality is an issue for the jury to decide. *United States v Gaudin*, 515 US 506, 511 (1995).

7.7 Odometer Tampering

A. Statute

MCL 257.233a(6)–(7) provide:

> "(6) A person shall not alter, set back, or disconnect an odometer; cause or allow an odometer to be altered, set back, or disconnected; or advertise for sale, sell, use, install, or cause or allow to be installed a device which causes an odometer to register other than the actual mileage driven. This subsection does not prohibit the service, repair, or replacement of an odometer if the mileage indicated on the odometer remains the same as before the service, repair, or replacement. If the odometer is incapable of registering the same mileage as before the service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his or her agent specifying the mileage prior to service, repair, or replacement of the odometer and the date on which it was serviced, repaired or replaced. A person shall not remove, deface, or alter any notice affixed to a motor vehicle pursuant to this subsection.
>
> "(7) A person who violates subsection (6) is guilty of a felony."

B. Elements of the Offense

MCL 257.233a(6)–(7) establishes one felony offense that can be committed six ways.

1. Altering, setting back, or disconnecting an odometer

- defendant altered, set back, or disconnected an odometer; and

- defendant's actions caused the odometer to register other than the actual mileage.

2. Causing or allowing another to alter, set back, or disconnect an odometer

- defendant caused or allowed another to alter, set back, or disconnect an odometer; and
- defendant's actions caused the odometer to register other than the actual mileage.

3. Selling, using, or installing a device that misrepresents actual mileage

- defendant advertised for sale, sold, used, or installed a device that caused an odometer register other than the actual mileage.

4. Causing or allowing another to install a device that misrepresents actual mileage

- defendant caused or allowed another to install a device that caused an odometer to register other than the actual mileage.

5. Failing to adjust an odometer or affix notice after service, repair, or replacement

- defendant had his or her odometer serviced, repaired or replaced;
- the odometer was incapable of registering the same mileage as before the service, repair, or replacement; and
- defendant, or his or her agent, failed to adjust the odometer to read zero, and failed to attach a notice to the left door frame specifying the mileage before the service, repair, or replacement.

6. Removing, defacing, or altering notice:

- defendant removed, defaced, or altered the notice affixed to the motor vehicle registering the actual mileage.

C. Criminal Penalties

MCL 257.902 provides the following penalties:

- imprisonment for not less than one year or more than five years; or
- fine of not less than $500.00 or more than $5,000.00; or
- both.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State. MCL 257.732(16)(c).

E. Issues

The odometer statute also applies to a new or used vehicle dealer, a lessor of a leased vehicle, and an auction dealer or vehicle salvage pool operator. See MCL 257.233a(11)–(13).

"[T]he odometer statute in Michigan does not require the intent to defraud . . . . The main purpose behind the odometer statute is to protect a buyer from being defrauded by a seller who fraudulently turns back the odometer." *People v Houseman*, 128 Mich App 17, 22 (1983)(footnote omitted; citations omitted).

"[F]ailure to comply with the odometer statute requirements merely renders the transaction voidable by the purchaser." It does not automatically void the transaction. *Whitecraft v Wolfe*, 148 Mich App 40, 54 (1985).

Failure to disclose odometer mileage is a misdemeanor under MCL 257.233a(1).*

*See Volume 1, Section 3.39 of the *Traffic Benchbook*.

MCL 257.233a(15) governs the civil liability of a person who, with intent to defraud, violates subsections (1) or (6) of the statute, or of a dealer who fails to retain odometer mileage statements for five years. These persons are liable in an amount equal to three times the amount of actual damages sustained or $1,500.00, whichever is greater, plus costs and reasonable attorney fees in the case of a successful recovery of damages.

7.8 Failing to Stop at Signal of Police Officer ("Fleeing and Eluding")

A substantially similar statute appears in both the Motor Vehicle Code and the Michigan Penal Code. MCL 257.602a and MCL 750.479a. Differences in the two statutes are noted below.

Note that the Motor Vehicle Code statute applies only to the operation of vehicles on the highways. MCL 257.601 (provisions of the Motor Vehicle Code apply "exclusively to the operation of vehicles on the highways except where a different place is specifically referred to. . .").

A. Statutes

Subsections (1)–(5) of both statutes are substantially similar. MCL 257.602a states as follows:

> "(1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the officer's vehicle is identified as an official police or department of natural resources vehicle."

> "(2) Except as provided in subsection (3), (4), or (5), an individual who violates subsection (1) is guilty of fourth-degree fleeing and eluding, a felony punishable by imprisonment for not more than 2 years or a fine of not more than $500.00,* or both.

*MCL 750.479a(2) provides for a fine of not more than $2000.00.

> "(3) Except as provided in subsection (4) or (5), an individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony punishable by imprisonment for not more than 5 years or a fine of not more than $1,000.00,* or both, if 1 or more of the following circumstances apply:

*MCL 750.479a(3) provides for a fine of not more than $5000.00.

> > "(a) The violation results in a collision or accident.
>
> > "(b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.
>
> > "(c) The individual has a prior conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

> "(4) Except as provided in subsection (5), an individual who violates subsection (1) is guilty of second-degree fleeing and eluding, a felony punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00,* or both, if 1 or more of the following circumstances apply:

*MCL 750.479a(4) provides for a fine of not more than $10,000.00.

*MCL 750.479a(4)(a) requires the violation to result in "serious impairment of a body function." See below and Section 7.9, below, for a definition of this term.

> "(a) The violation results in serious injury* to an individual.
>
> "(b) The individual has 1 or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.
>
> "(c) The individual has any combination of 2 or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

*MCL 750.479a(5) provides for a fine of not more than $15,000.00.

> "(5) If the violation results in the death of another individual, an individual who violates subsection (1) is guilty of first-degree fleeing and eluding, a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00,* or both." MCL 257.602a(1)–(5) and MCL 750.479a(1)–(5).

MCL 257.602a(7) defines "serious injury" in the following manner:

> "As used in this section, 'serious injury' means a physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb. Serious injury includes, but is not limited to, 1 or more of the following:
>
> "(a) Loss of a limb or use of a limb.
>
> "(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
>
> "(c) Loss of an eye or ear or use of an eye or ear.
>
> "(d) Loss or substantial impairment of a bodily function.
>
> "(e) Serious visible disfigurement.
>
> "(f) A comatose state that lasts for more than 3 days.
>
> "(g) Measurable brain damage or mental impairment.
>
> "(h) A skull fracture or other serious bone fracture.
>
> "(i) Subdural hemorrhage or hematoma."

The definition of "serious impairment of a body function" for purposes of MCL 750.479a(4) is contained in MCL 257.58c of the Motor Vehicle Code. MCL 750.479a(9). That statute's definition of "serious impairment of body function" is similar to the non-exclusive list of injuries quoted above, except that "substantial impairment of a body function" also includes loss of an organ. MCL 257.8c(j).

B. Elements of the Offense

The elements of **fourth-degree fleeing and eluding** are:

1) The officer was in uniform and performing his or her lawful duties [and any vehicle driven by the officer was adequately marked as a law enforcement vehicle.]

2) The defendant was driving a motor vehicle.

3) The police officer ordered the defendant to stop the vehicle.

4) The defendant knew of the order.

5) The defendant refused to obey the order by trying to flee or avoid being caught.*

*This element of CJI2d 13.6c (third-degree fleeing and eluding) was upheld in *People v Grayer*, 252 Mich App 349, 355 (2002).

CJI2d 13.6d.

The elements of **third-degree fleeing and eluding** are:

1) The elements of fourth-degree fleeing and eluding, and one of the following:

   - the violation resulted in a collision or accident, or
   - any portion of the violation occurred in an area where the speed limit was 35 miles per hour or less. The speed limit may be posted or imposed as a matter of law, or
   - the defendant has been previously convicted of fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

CJI2d 13.6c.

The elements of **second-degree fleeing and eluding** are:

1) The elements of fourth-degree fleeing and eluding, and one of the following:

   - the violation resulted in serious injury [serious impairment of a body function] to an individual, or

- the defendant has one or more previous convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct, or

- the defendant has two or more previous convictions of any combination of the following offenses: fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former Michigan law prohibiting substantially similar conduct.

CJI2d 13.6b

The elements of **first-degree fleeing and eluding** are:

1) The elements of fourth-degree fleeing and eluding, and

2) The violation resulted in the death of another person.

CJI2d 13.6a.

C. Criminal Penalties

For **fourth-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than two years; or
- fine of not more than $500.00;* or
- both.

* MCL 750.479a(2) provides for a fine of not more than $2,000.00.

For **third-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than five years; or
- fine of not more than $1,000.00;* or
- both.

* MCL 750.479a(3) provides for a fine of not more than $5,000.00.

For **second-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than ten years; or
- fine of not more than $5,000.00;* or
- both.

* MCL 750.479a(4) provides for a fine of not more than $10,000.00.

For **first-degree fleeing and eluding**, the penalties are as follows:

- imprisonment for not more than 15 years; or
- fine of not more than $10,000.00;* or
- both.

* MCL 750.479a(5) provides for a fine of not more than $15,000.00.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(f) and MCL 257.732(1)(a), (4)(a).

2. Following convictions of fourth- or third-degree fleeing and eluding, suspension of defendant's license is mandatory for a period of one year. MCL 257.319(2)(e) and MCL 750.479a(6).

3. Following convictions of second- or first-degree fleeing and eluding, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(5)(d), (f) and MCL 750.479a(7).

4. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for fleeing and eluding and any of the motor vehicle felonies listed at MCL 257.303(5)(b)(*ii*) and (*iv*).

5. Upon posting of an abstract that an individual has been found guilty of fleeing and eluding, the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*v*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

Whether sufficient evidence exists to bind over a defendant for fleeing and eluding depends on "the type of signal given and the context in which it occurs[.]" *People v Green*, 260 Mich App 710, 718 (2004). In *Green*, the defendant moved to quash the information against him for fleeing and eluding on the grounds that the police officer and the police vehicle failed to satisfy the statutory requirement that both the vehicle and the officer be "plainly or clearly marked" at the time of the incident. The trial court granted the defendant's motion because the police officer who ordered the defendant to stop "was not in or near his police vehicle at the time defendant left the area." *Id.* at 713.

The Court of Appeals reversed the trial court's ruling and explained that the plain language of the fleeing and eluding statute requires a driver to stop when given a visual or audible signal by a police officer. The officer's signal may be given by hand, voice, emergency light, or siren, but the Court emphasized

that MCL 750.479a "does not require that this signal to the driver of a motor vehicle be given from within the officer's officially identified police vehicle." *Green*, *supra* at 717 (emphasis in original). The Court further explained that the "fair and natural import" of the statutory language indicates that if the signal to stop is given by an officer away from that officer's vehicle, the statute requires that the officer be in uniform. *Id.* at 718. Similarly, "if the signal occurs by emergency light or siren, that signal must come from an officially identified police vehicle in order to hold a driver accountable for the offense of fleeing and eluding." *Id.*

Neither statute is limited to prohibiting only high-speed or long-distance "police chases." The Court of Appeals found sufficient evidence to bind over the defendant for trial where, after the police officer signalled for defendant to stop, defendant sped up slightly, made two turns, stopped the car, and attempted to flee on foot. A defendant's intent to flee or elude a police officer may be inferred from his or her acceleration, turning off the vehicle's headlights, or other similar actions after the officer signals the defendant to stop. *People v Grayer*, 235 Mich App 737, 741–42 (1999). See also *People v Grayer*, 252 Mich App 349, 355–56 (2002) (the evidence in this case was sufficient to support defendant's conviction).

Fleeing and eluding is not a specific-intent crime; therefore, a defendant cannot raise voluntary intoxication as a defense to a charge of fleeing and eluding. *People v Abramski*, 257 Mich App 71, 73 (2003). In *Abramski*, the defendant was convicted by jury of four charges, including fleeing and eluding and operating a motor vehicle while under the influence. The defendant argued that the statutory language prohibiting the conduct of fleeing and eluding expressly requires that a driver willfully fail to obey a police officer's direction. According to the defendant, the inclusion of the word "willfully" in the statutory language indicated that more than general intent was required to constitute a violation. The Court of Appeals disagreed and reasoned that "'[w]here the knowledge element of an offense is necessary simply to prevent innocent acts from constituting crimes,'" the "knowledge" or "willful" element of the statute is only a general intent requirement. *Id.*, quoting *People v Karst*, 138 Mich App 413, 416 (1984).

Having concluded that the fleeing and eluding statute does not require that an individual intend that his or her conduct cause or result in a specific consequence beyond fleeing and eluding, the defendant could not raise voluntary intoxication as a defense. "[V]oluntary intoxication is not a defense to a general-intent crime." *Abramski*, *supra* at 73.

A passenger may be convicted of fleeing and eluding under an aiding and abetting theory. *People v Branch*, 202 Mich App 550, 551–52 (1993). In *Branch*, during a high-speed chase, defendant threw full beer cans at a police car giving chase and instructed the driver. The Court of Appeals held that the aiding and abetting statute, MCL 767.39, may be applied to passengers, and that the jury was properly instructed that a defendant must have intentionally assisted the driver to commit fleeing and eluding. *Branch*, *supra*.

A person may be convicted under either MCL 257.602a(2)–(5) or MCL 750.479a(2)–(5) but not both, for conduct arising out of the same transaction. MCL 257.602a(6) and MCL 750.479a(8). A person may be charged with and convicted of MCL 257.602a(5) or MCL 750.479a(5) for each death arising out of the same criminal transaction, and a court may impose consecutive sentences upon conviction. MCL 769.36(1)(a) and (b).

F. Related Misdemeanor

Refusing to comply with a lawful order or direction of a police officer under MCL 257.602 is a separate misdemeanor offense. The sanctions for this offense do not include license suspension, but offenders are subject to a maximum 90 day jail term and/or a maximum $100.00 fine. MCL 257.901(2).

7.9 Leaving the Scene of an Accident Resulting in Serious Impairment of a Body Function or Death

A. Statutes

Sections 617 and 619 of the Vehicle Code require a driver involved in an accident on property open to public travel to stop at the scene of the accident, to provide specific information to certain individuals, and to assist any individual needing medical aid as a result of the accident.

MCL 257.617* states:

*Amended by 2005 PA 3, effective April 1, 2005.

> "(1) The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident upon public or private property that is open to travel by the public shall immediately stop his or her vehicle at the scene of the accident and shall remain there until the requirements of section 619 are fulfilled or immediately report the accident to the nearest or most convenient police agency or officer to fulfill the requirements of section 619(a) and (b) if there is a reasonable and honest belief that remaining at the scene will result in further harm. The stop shall be made without obstructing traffic more than is necessary.
>
> "(2) Except as provided in subsection (3), if the individual violates subsection (1) and the accident results in serious impairment of a body function or death, the individual is guilty of a felony . . . .
>
> "(3) If the individual violates subsection (1) following an accident caused by that individual and the accident results in the death of another individual, the individual is guilty of a felony . . . ."

*Amended by 2005 PA 3, effective April 1, 2005.

MCL 257.619* states:

> "The driver of a vehicle who knows or who has reason to believe that he or she has been involved in an accident with an individual or with another vehicle that is operated or attended by another individual shall do all of the following:
>
> > "(a) Give his or her name and address, and the registration number of the vehicle he or she is operating, including the name and address of the owner, to a police officer, the individual struck, or the driver or occupants of the vehicle with which he or she has collided.
> >
> > "(b) Exhibit his or her operator's or chauffeur's license to a police officer, individual struck, or the driver or occupants of the vehicle with which he or she has collided.
> >
> > "(c) Render to any individual injured in the accident reasonable assistance in securing medical aid or arrange for or provide transportation to any injured individual."

The term "serious impairment of a body function of a person" is defined at MCL 257.58c:

> "'Serious impairment of a body function' includes, but is not limited to, 1 or more of the following:
>
> > "(a) Loss of a limb or loss of use of a limb.
> >
> > "(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
> >
> > "(c) Loss of an eye or ear or loss of use of an eye or ear.
> >
> > "(d) Loss or substantial impairment of a bodily function.
> >
> > "(e) Serious visible disfigurement.
> >
> > "(f) A comatose state that lasts for more than 3 days.
> >
> > "(g) Measurable brain or mental impairment.
> >
> > "(h) A skull fracture or other serious bone fracture.
> >
> > "(i) Subdural hemorrhage or subdural hematoma.
> >
> > "(j) Loss of an organ."

B. Elements of the Offense

1) Defendant driver knew or had reason to believe that he or she was involved in an accident; and

2) The accident occurred on property open to public travel; and

3) The accident resulted in serious impairment of a body function or death; and

4) Defendant driver failed to stop and remain at the scene of the accident long enough to fulfill the requirements of MCL 257.619; or

5) There existed a reasonable and honest belief that remaining at the scene would result in further harm, defendant driver did not stop at the scene, and defendant driver failed to immediately report the accident to the nearest or most convenient police officer or agency to fulfill the requirements of MCL 257.619(a) and (b).

C. Criminal Penalties

1) If a defendant driver violates MCL 257.617(1) and the accident results in serious impairment of a body function or death, MCL 257.617(2) provides for the following penalties:

   - Imprisonment for not more than 5 years; or
   - Fine of not more than $5,000.00; or
   - Both.

2) If, after an accident caused by the defendant, the defendant driver violates MCL 257.617(1) and the accident results in another individual's death, MCL 257.617(3) provides for the following penalties:

   - Imprisonment for not more than 15 years; or
   - Fine of not more than $10,000.00; or
   - Both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(d) and MCL 257.732(1)(a).

2. Following a conviction of a violation or attempted violation of this section, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(5)(d).

3. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of failing to stop and disclose identity at the scene of an accident when required by law, the Secretary of State shall assess a $1,000.00 driver responsibility fee for 2 consecutive years. MCL 257.732a(2)(a)(*iv*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

Where the term "accident" appears in criminal statutes that forbid leaving the scene of a personal injury accident, it includes intentional conduct; the cause of the accident is not a concern. *People v Martinson*, 161 Mich App 55, 57 (1987).

Intent to injure is not a necessary element of failing to stop and identify at the scene of a personal injury accident. *People v Strickland*, 79 Mich App 454, 456 (1977).

In *People v Lang*, 250 Mich App 565, 572 (2002), the Court of Appeals held that to convict an individual of violating §617, the prosecution must show that the individual knew or had reason to believe that the accident resulted in serious or aggravated injury or death to another person. In response to the *Lang* decision, the Legislature amended MCL 257.617, 257.617a, 257.618, and 257.619, deleting the requirement that a driver know or have reason to believe that an accident resulted in physical injury, death, or property damage. 2005 PA 3.

Whether "reasonable assistance," as the term is used in §619, has been provided, is to be determined using the reasonable person standard. *People v Noble*, 238 Mich App 647, 654 (1999). Even assuming the immediate death of the victim, there still remains a duty to care for the remains. *People v Hoaglin*, 262 Mich 162, 169 (1933), and *People v Sartor*, 235 Mich App 614, 621 (1999).

The requirements of §617 and §619 apply to single-vehicle accidents. *People v Noble*, *supra* at 659. The Court of Appeals noted that "[b]ecause the statutory language does not specifically limit the provisions of §§ 617 and 619 to accidents involving two vehicles or a vehicle and a pedestrian, we conclude that the Legislature did not intend to so limit those provisions." *People v Noble*, *supra*.

To be "involved in" an accident means to be implicated in an accident or connected with an accident in a substantial manner, and the defendant need not have caused the accident in order to have been "involved in" the accident. *People v Oliver*, 242 Mich App 92, 97-98 (2000).

A person other than the driver who is in the motor vehicle at the time of the accident may be properly charged with aiding and abetting in the commission of leaving the scene of an accident without rendering necessary assistance to an injured person. If the person is found guilty, he or she is subject to the same punishment as the driver. *People v Hoaglin*, *supra* at 172.

Double jeopardy was not violated when defendant was convicted of both assault with a deadly weapon and failure to stop at the scene of a personal injury accident, where defendant pinned the victim between two cars and drove away. The two constituted different crimes; they were not submitted to the jury as alternatives or relied on by defense counsel as such. *People v Martinson*, *supra* at 58.

Double jeopardy was not violated when defendant was charged with both felonious driving and failing to stop at an accident involving a personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty to the one charge did not prevent trial on the other. *People v Goans*, 59 Mich App 294, 296-98 (1975). A person may be charged with and convicted of MCL 257.617 for each death arising out of the same criminal transaction, and a court may impose consecutive sentences upon conviction. MCL 769.36(1)(a).

A defendant's Fifth Amendment right against self-incrimination is not implicated by requiring the defendant to comply with a statutory mandate to stop and disclose neutral information at the scene of a serious accident. *People v Goodin*, 257 Mich App 425, 433 (2003). Accordingly, the defendant's constitutional rights were not violated when he was charged with failure to stop at the scene of an accident and negligent homicide.

MCL 257.617 requires a driver who was involved in an accident resulting in serious injury to stop at the scene of the accident and fulfill the disclosure requirements of MCL 257.619. In *Goodin*, the defendant argued "that had he stopped and given the required information, he would have incriminated himself for negligent homicide by admitting he was at the scene and involved in the events leading up to the accident." *Goodin*, *supra* at 428. The Court disagreed with the defendant and held that the disclosures required of drivers involved in serious accidents do not create a significant risk of self-incrimination. According to the *Goodin* Court:

> "[T]he disclosures of one's name, address, vehicle registration number, and driver's license required by MCL 257.617 and MCL 257.619 are neutral and do not implicate a driver in criminal conduct. Moreover, MCL 257.617 is not directed at a 'highly selective group' or a group 'inherently suspect of criminal activities,' but rather is aimed at any driver involved in an accident that results in serious personal injuries or death." *Goodin*, *supra* at 430, citing *California v Byers*, 402 US 424 (1971).

F. Related Misdemeanors

*See Volume 1, Section 3.15, for discussion of this offense.

Leaving the scene of an accident resulting in personal injury, but not serious or aggravated personal injury, is a one-year misdemeanor. MCL 257.617a.*

*See Volume 1, Section 3.16, for discussion of this offense.

Leaving the scene of an accident resulting in damage to an attended vehicle is a misdemeanor. MCL 257.618.*

7.10 Felonious Driving

A. Statutes

2001 PA 134 repealed the felonious driving statute, MCL 750.191, and moved the offense to the Vehicle Code under MCL 257.626c, which states:

> "A person who operates a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both."

Where the former statute used the term "cripple," the current statute uses the term "serious impairment of a body function of a person," defined at MCL 257.58c:

> "'Serious impairment of a body function' includes, but is not limited to, 1 or more of the following:
>
> "(a) Loss of a limb or loss of use of a limb.
>
> "(b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
>
> "(c) Loss of an eye or ear or loss of use of an eye or ear.
>
> "(d) Loss or substantial impairment of a bodily function.
>
> "(e) Serious visible disfigurement.
>
> "(f) A comatose state that lasts for more than 3 days.

"(g) Measurable brain or mental impairment.

"(h) A skull fracture or other serious bone fracture.

"(i) Subdural hemorrhage or subdural hematoma.

"(j) Loss of an organ."

B. Elements of the Offense

1) The defendant operated a motor vehicle on a highway or other place open to the public or generally accessible to motor vehicles, including an area designated for parking.

2) The defendant operated the vehicle:

   - carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or
   - without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property.

3) The defendant's operation of the vehicle resulted in serious impairment of a body function, but not death.

C. Criminal Penalties

MCL 257.626c provides the following criminal penalties:

- imprisonment for not more than two years; or
- fine of not more than $2,000.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(e) and MCL 257.732(4)(b).

2. Suspension of defendant's license is mandatory under statute for a period of one year. MCL 257.319(2)(c).

E. Issues

A defendant was not operating a motor vehicle for purposes of MCL 257.626c when, while he was a front-seat passenger in another person's vehicle, the defendant grabbed the steering wheel and turned it without the driver's

permission, causing the vehicle to leave the road and strike a jogger. *People v Yamat,* ___ Mich App ___, ___ (2005). In reaching its decision, the *Yamat* Court first acknowledged that the Legislature defined a critical term in the statute, "operate," as "being in actual physical control of a vehicle . . . ." MCL 257.35a. The Court further noted, however, that the Legislature did not define the term "control." In the absence of a statutory definition, the Court consulted a dictionary; according to Webster's New Collegiate Dictionary (1980), "control" means "power or authority to guide or manage."

Applying the hybrid definition outlined above to the facts of the *Yamat* case, the Court explained its conclusion:

> "Applying these definitions, we conclude that defendant was not in actual physical control of the vehicle. Rather, defendant was interfering with the actual physical control of the vehicle. The undisputed evidence shows that the driver, who had control of the gas and brake pedals, emergency brake, ignition, turn signals, and steering wheel, was appropriately driving the vehicle until defendant grabbed the steering wheel, causing the vehicle to veer off the road. Although defendant's act caused the vehicle to veer off the road, defendant did not have the actual physical control of the vehicle, i.e., the power or authority to guide or manage the vehicle. Defendant could not have stopped or started the vehicle, nor could he have caused it to increase or decrease in speed. Defendant could not use any of the vehicles [sic] other instruments; therefore he was not in actual physical control of the vehicle." *Yamat, supra* at ___.

*The cases summarized in this paragraph and below construe former MCL 750.191.

Felonious driving is a crime against a person that focuses on both the culpable nature of defendant's actions and the resulting harm. The primary purpose of the statute is to protect persons from crippling injuries. One unit of prosecution arises whenever a defendant's reckless driving results in crippling injury to another; the defendant could be convicted of a count of felonious driving for each person who received a crippling injury. *People v Matthews*, 197 Mich App 143, 145 (1992).*

The defendant's grossly negligent conduct must be a proximate cause (not the *only* cause) of the accident. *People v Tims*, 449 Mich 83, 96 (1995).

A conviction for felonious driving requires proof that defendant caused the accident that resulted in the injury. A conviction does not require proof that defendant actually injured the pedestrian. In *Johnson*, a pedestrian was seriously injured when he was struck by an auto that was trying to avoid collision with defendant's auto. At the time of the accident, defendant had gone through a stop sign and was driving at a high rate of speed in an attempt to get away from a police officer who was chasing him. *People v Johnson*, 174 Mich App 108, 117 (1989).

The felonious driving statute refers not only to the manner in which a vehicle is driven but also to the operation of an inherently dangerous vehicle. Defendant's failure to adequately secure his trailer, which came loose from his car and struck the car in which the victims were riding, was criminally actionable under the felonious driving statute. A person who knowingly drives a vehicle that is so unsafe that it poses a substantial threat to the safety of others may be convicted of felonious driving. *People v Sherman*, 188 Mich App 91, 95 (1991).

A defendant can be convicted of both OWI under Vehicle Code §625(1) and felonious driving even though intoxication is the only proof of the requisite mental state for felonious driving. *People v Crawford*, 187 Mich App 344, 347-52 (1991).

The statute seems to indicate alternative ways of committing felonious driving, including both acts of ordinary and gross negligence. But case law holds that gross negligence is required; ordinary negligence is insufficient. *People v Chatterton*, 411 Mich 867 (1981), aff'd *People v Chatterton*, 102 Mich App 248, 301 (1980).

Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court held that three necessary elements must be found:

> 1. Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.
>
> 2. Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.
>
> 3. The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.

Double jeopardy was not violated when defendant was charged with both felonious driving and leaving the scene of an accident resulting in personal injury, where defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty on the one charge did not prevent trying the other. *People v Goans*, 59 Mich App 294, 296-98 (1975).

7.11 Moving Violation Causing Death of Construction Worker

A. Statute

MCL 257.601b(3) states:

> "A person who commits a moving violation for which not fewer than 3 points are assigned under section 320a and as a result causes death to a person working in [a] work zone* is guilty of a felony punishable by a fine of not more than $7,500.00 or by imprisonment for not more than 15 years, or both."

*See Volume 1, Section 1.20(A), for the definition of "work zone."

A "moving violation," as defined at MCL 257.601b(6)(b), is:

> "An act or omission prohibited under this act or a local ordinance substantially corresponding to this act that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine."

B. Elements of the Offense

1. Defendant committed a moving violation for which not fewer than three points are assigned under section 320a.

2. As a result of this violation, defendant caused death to a person working in a work zone.

C. Criminal Penalties

MCL 257.601b(3) provides for the following penalties:

- imprisonment for not more than 15 years; or
- fine of not more than $7,500.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(b) and MCL 257.732(1)(a).

2. Following a conviction of a violation or attempted violation of this section, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(5)(d).

3. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of committing a moving violation causing the death of a construction worker, the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Related Misdemeanor

Committing a moving violation for which not fewer than three points are assigned under section 320a and causes injury to a person working in a work zone is a misdemeanor. MCL 257.601b(2).*

*See Volume 1, Section 3.47, for discussion of this offense.

7.12 Moving Violation Causing Death of Operator of Implement of Husbandry

A. Statutes

MCL 257.601c(2) states:

> "A person who commits a moving violation that has criminal penalties and as a result causes death to a person operating an implement of husbandry on a highway in compliance with this act is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $7,500.00, or both."

A "moving violation," as defined at MCL 257.601c(3), is:

> "an act or omission prohibited under this act or a local ordinance substantially corresponding to this act that occurs while a person is operating a motor vehicle, and for which the person is subject to a fine."

An "implement of husbandry," as defined at MCL 257.21, is:

> "a vehicle which is either a farm tractor, a vehicle designed to be drawn by a farm tractor or an animal, a vehicle which directly harvests farm products, or a vehicle which directly applies fertilizer, spray, or seeds to a farm field."

B. Elements of the Offense

1. Defendant committed a moving violation that has criminal penalties.

2. As a result of this violation, defendant caused the death of a person operating an implement of husbandry on a highway in compliance with the Vehicle Code.

C. Criminal Penalties

MCL 257.601c(2) provides for the following penalties:

- imprisonment for not more than 15 years; or
- fine of not more than $7,500.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(b) and MCL 257.732(1)(a).

2. Following a conviction of a violation or attempted violation of this section, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(5)(d).

3. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of a moving violation causing the death of an operator of an implement of husbandry, the Secretary of State shall assess a $1,000.00 driver responsibility fee for 2 consecutive years. MCL 257.732a(2)(a)(*ii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Related Misdemeanor

Committing a moving violation that has criminal penalties and causes injury to a person operating an implement of husbandry on a highway is a misdemeanor. MCL 257.601c(1).*

*See Volume 1, Section 3.48, for discussion of this offense.

7.13 Failure to Use Due Care and Caution Causing Injury or Death to Emergency Response Personnel

A. Statute

MCL 257.653a(1) and (3)-(4) state:

> "(1) Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted by section 698, the driver of an approaching vehicle shall exhibit due care and caution, as required under the following:
>
> > "(a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b).
>
> > "(b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.
>
> * * *
>
> "(3) A person who violates this section and causes injury to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle is guilty of a felony punishable by a fine of not more than $1,000.00 or imprisonment for not more than 2 years, or both.
>
> "(4) A person who violates this section and causes death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle is

guilty of a felony punishable by a fine of not more than $7,500.00 or by imprisonment for not more than 15 years, or both."

B. Elements of the Offense

1. Defendant, while on a public roadway, was approaching or passing a stationary authorized emergency vehicle that was giving a visual signal by flashing, rotating, or oscillating lights; and

2. Defendant failed to proceed with due care and caution

> a. on a public roadway with at least two adjacent lanes proceeding in the same direction, defendant failed to move at least one lane or two vehicle widths apart from the stationary authorized emergency vehicle, or
>
> b. if such movement was not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic, or if the public roadway does not contain two adjacent lanes proceeding in the same direction, defendant failed to reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic, or
>
> c. defendant failed to proceed as otherwise directed by a police officer; and

3. As a result of this violation, defendant caused injury or death to a police officer, firefighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle.

C. Criminal Penalties

For causing injury to emergency response personnel, the penalties are as follows, pursuant to MCL 257.653a(3):

- imprisonment for not more than two years; or
- fine of not more than $1,000.00; or
- both.

For causing death to emergency response personnel, the penalties are as follows, pursuant to MCL 257.653a(4):

- imprisonment for not more than 15 years; or
- fine of not more than $7,500.00; or

- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(b) and MCL 257.732(1)(a).

2. Following a conviction of a violation or attempted violation of causing injury to emergency response personnel, the Secretary of State shall suspend the defendant's driver's license for a period of 90 days. MCL 257.319(3)(b).

3. Following a conviction of a violation or attempted violation of causing death to emergency response personnel, the Secretary of State shall revoke the defendant's driver's license. MCL 257.303(5)(d).

4. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for causing either injury or death to emergency response personnel and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

5. Upon posting of an abstract that an individual has been found guilty of failing to use due care and caution causing injury or death to emergency response personnel, the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*ii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Related Misdemeanor

A violation of §653a that does not result in injury or death to emergency response personnel is a misdemeanor. MCL 257.653a(2).*

*See Volume 1, Section 3.43, for discussion of this offense.

7.14 Buying, Selling, or Using a Signal Preemption Device

A. Statute

MCL 257.616a(1)-(5) state:

> "(1) Except as provided in subsections (3) and (4), a person shall not do any of the following:
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> * * *
>
> "(b) Use a portable signal preemption device.
>
> "(c) Sell a portable signal preemption device to a person other than a person described in subsection (3).

"(d) Purchase a portable signal preemption device for use other than a duty as described in subsections (3) and (4).

"(2) A person who violates subsection (1) is guilty of a crime as follows:

* * *

"(b) Except as provided in subdivisions (c), (d), and (e), a person who violates subsection (1)(b) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

"(c) A person who violates subsection (1)(b), which violation results in a traffic accident, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $15,000.00, or both.

"(d) A person who violates subsection (1)(b), which violation results in the serious impairment of a body function, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $20,000.00, or both.

"(e) A person who violates subsection (1)(b), which violation results in the death of another, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $25,000.00, or both.

"(f) A person who violates subsection (1)(c) or (d) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

"(3) This section does not apply to any of the following:

"(a) A law enforcement agency in the course of providing law enforcement services.

"(b) A fire station or a firefighter in the course of providing fire prevention or fire extinguishing services.

"(c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services.

"(d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties.

* * *

"(5) As used in this section:

"(a) 'Portable signal preemption device' means a device that, if activated by a person, is capable of changing a traffic control signal to green out of sequence.

"(b) 'Serious impairment of a body function' means that term as defined in section 58c."

B. Elements of the Offense

MCL 257.616a may be violated in three ways.

Improper use of a signal preemption device

1. Defendant used a portable signal preemption device.

2. Defendant was not a law enforcement agent, firefighter, or emergency medical personnel acting in the course of duty.

Improper sale of a signal preemption device

1. Defendant sold a signal preemption device.

2. The buyer was not a law enforcement agency, firestation, firefighter, emergency medical service provider, or an operator, passenger, or owner of an authorized emergency vehicle.

Improper purchase of a signal preemption device

1. Defendant purchased a signal preemption device.

2. The device was purchased for use other than providing law enforcement, fire prevention, fire extinguishing, medical transportation, or emergency services.

C. Criminal Penalties

For improper use of a signal preemption device, the penalties are as follows, pursuant to MCL 257.616a(2)(b):

- imprisonment for not more than two years; or
- fine of not more than $10,000.00; or
- both.

When the improper use of a signal preemption device results in a traffic accident, the penalties are increased as follows, pursuant to MCL 257.616a(2)(c):

- imprisonment for not more than five years; or
- fine of not more than $15,000.00; or
- both.

When the improper use of a signal preemption device results in serious impairment of a body function, the penalties are increased as follows, pursuant to MCL 257.616a(2)(d):

- imprisonment for not more than ten years; or
- fine of not more than $20,000.00; or
- both

When the improper use of a signal preemption device results in the death of another person, the penalties are increased as follows, pursuant to MCL 257.616a(2)(e):

- imprisonment for not more than 15 years; or
- fine of not more than $25,000.00; or
- both.

For improper sale or purchase of a signal preemption device, the penalties are as follows, pursuant to MCL 257.616a(2)(f):

- imprisonment for not more than two years; or
- fine of not more than $10,000.00; or
- both.

D. Licensing Sanctions

No points. The conviction is not reported to the Secretary of State. MCL 257.732(16)(b).

E. Related Misdemeanor

Possession of a signal preemption device by anyone other than one of the authorized emergency response services or a delivery service in the course of shipping or delivering the device is a misdemeanor. MCL 257.616a(1)(a).